

§ 261.51

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of the base penalty by two percentage points over the previous year's penalty. However, the penalty can never exceed 21 percent of the State's adjusted SFAG.

(c) We impose a penalty by reducing the SFAG payable for the fiscal year that immediately follows our final determination that a State is subject to a penalty and our final determination of the penalty amount.

(d) In accordance with the procedures specified at § 262.4 of this chapter, a State may dispute our determination that it is subject to a penalty.

§ 261.51 Under what circumstances will we reduce the amount of the penalty below the maximum?

(a) We will reduce the amount of the penalty based on the degree of the State's noncompliance.

(1) If the State fails only the two-parent participation rate specified at § 261.23, reduced by any applicable caseload reduction credit, its maximum penalty will be a percentage of the penalty specified at § 261.50. This percentage will equal the percentage of two-parent cases in the State's total caseload.

(2) If the State fails the overall participation rate specified at § 261.21, reduced by any applicable caseload reduction credit, or both rates, its maximum penalty will be the penalty specified at § 261.50.

(b)(1) In order to receive a reduction of the penalty amounts determined under paragraphs (a)(1) or (a)(2) of this section:

(i) The State must achieve participation rates equal to a threshold level defined as 50 percent of the applicable minimum participation rate at § 261.21 or § 261.23, minus any caseload reduction credit determined pursuant to subpart D of this part; and

(ii) The adjustment factor for changes in the number of individuals engaged in work, described in paragraph (b)(4) of this section, must be greater than zero.

(2) If the State meets the requirements of paragraph (b)(1) of this section, we will base its reduction on the severity of the failure. For this purpose, we will calculate the severity of the State's failure based on:

(i) The degree to which it missed the target rate;

(ii) An adjustment factor that accounts for changes in the number of individuals who are engaged in work in the State since the prior year; and

(iii) The number of consecutive years in which the State failed to meet the participation rates and the number of rates missed.

(3) We will determine the degree to which the State missed the target rate using the ratio of the following two factors:

(i) The difference between the participation rate achieved by the State and the 50-percent threshold level (adjusted for any caseload reduction credit determined pursuant to subpart D of this part); and

(ii) The difference between the minimum applicable participation rate and the threshold level (both adjusted for any caseload reduction credit determined pursuant to subpart D of this part).

(4) We will calculate the adjustment factor for changes in the number of individuals engaged in work using the following formula:

(i) The average monthly number of individuals engaged in work in the penalty year minus the average monthly number of individuals engaged in work in the prior year, divided by,

(ii) The product of 0.15 and the average monthly number of individuals engaged in work in the prior year.

(5) Subject to paragraph (c) of this section, if the State fails only the two-parent participation rate specified at § 261.23, and qualifies for a penalty reduction under paragraph (b)(1) of this section, its penalty reduction will be the product of:

(i) The amount determined in paragraph (a)(1) of this section;

(ii) The ratio described in paragraph (b)(3) of this section computed with respect to two-parent families; and

(iii) The adjustment factor described in paragraph (b)(4) of this section computed with respect to two-parent families.

(6) Subject to paragraph (c) of this section, if the State fails the overall participation rate specified at § 261.21, or both rates, and qualifies for a penalty reduction under paragraph (b)(1) of

this section, its penalty reduction will be the product of:

- (i) The amount determined in paragraph (a)(2) of this section;
- (ii) The ratio described in paragraph (b)(3) of this section computed with respect to all families; and
- (iii) The adjustment factor described in paragraph (b)(4) of this section.

(7) Pursuant to §260.58 of this chapter, we will adjust the calculations in this section to exclude cases for which a State has granted federally recognized good cause domestic violence waivers.

(c)(1) If the State was not subject to a penalty the prior year, the State will receive:

(i) The full applicable penalty reduction described in paragraph (b)(5) or (b)(6) of this section if it failed only one participation rate; or

(ii) 50 percent of the penalty reduction described in paragraph (b)(6) of this section if it failed both participation rates.

(2) If the penalty year is the second successive year in which the State is subject to a penalty, the State will receive:

(i) 50 percent of the applicable penalty reduction described in paragraph (b)(5) or (b)(6) of this section if it failed only one participation rate; or

(ii) 25 percent of the penalty reduction described in paragraph (b)(6) of this section if it failed both participation rates.

(3) If the penalty year is the third or greater successive year in which the State is subject to a penalty, the State will not receive a penalty reduction described in paragraph (b)(5) or (b)(6) of this section.

(d)(1) We may reduce the penalty if the State failed to achieve a participation rate because:

(i) It meets the definition of a needy State, specified at §260.30 of this chapter; or,

(ii) Noncompliance is due to extraordinary circumstances such as a natural disaster, regional recession, or substantial caseload increase.

(2) In determining noncompliance under paragraph (d)(1)(ii) of this section, we will consider such objective evidence of extraordinary cir-

cumstances as the State chooses to submit.

§ 261.52 Is there a way to waive the State's penalty for failing to achieve either of the participation rates?

(a) We will not impose a penalty under this part if we determine that the State has reasonable cause for its failure.

(b) In addition to the general reasonable cause criteria specified at §262.5 of this chapter, a State may also submit a request for a reasonable cause exemption from the requirement to meet the minimum participation rate in two specific case situations.

(1) We will determine that a State has reasonable cause if it demonstrates that failure to meet the work participation rates is attributable to its provision of federally recognized good cause domestic violence waivers (i.e., it provides evidence that it achieved the applicable work rates when individuals receiving federally recognized good cause domestic violence waivers of work requirements, in accordance with the provisions at §§260.54(b) and 260.55 of this chapter, are removed from the calculations in §§261.22(b) and 261.24(b)).

(2) We will determine that a State has reasonable cause if it demonstrates that its failure to meet the work participation rates is attributable to its provision of assistance to refugees in federally approved alternative projects under section 412(e)(7) of the Immigration and Nationality Act (8 U.S.C. 1522(e)(7)).

(c) In accordance with the procedures specified at §262.4 of this chapter, a State may dispute our determination that it is subject to a penalty.

§ 261.53 May a State correct the problem before incurring a penalty?

(a) Yes. A State may enter into a corrective compliance plan to remedy a problem that caused its failure to meet a participation rate, as specified at §262.6 of this chapter.

(b) To qualify for a penalty reduction under §262.6(j)(1) of this chapter, based on significant progress towards correcting a violation, a State must reduce the difference between the participation rate it achieved in the year